IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6914 OF 2003

Ms.Gauri Godse for the Petitioner.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005
P.C.:	

1. By this petition the Petitioner challenges the order passed by the Appellate Court declining to condone delay in filing the appeal. The appeal has been filed after seven years of passing of the decree.

2. Ground for condonation of delay given was that the suit summons was not served on the Petitioner. It is contended by the Petitioner that the Petitioner was not residing at the address mentioned in the plaint.

3. The Appellate Court has observed that on the record there is a postal envelope which shows that the Petitioner has refused to accept the suit summons.

4. In this background, therefore, if it was the case of the Petitioner that she was residing at some address other than the one which is mentioned in the plaint, the entire burden was on the Petitioner to place before the Court along with the application for condonation of delay, the documents which will show that she was residing at the place different from the one which is mentioned in the plaint at the relevant time. No such document is produced on record, and therefore, in my opinion, the Appellate Court has rightly disbelieved the Petitioner.

5. It is submitted by the learned Counsel for the Petitioner that because other side did not dispute

this fact in the reply, the court should have accepted it. The contention is not well founded. Firstly, perusal of the reply shows that the Plaintiff has denied all the averments made in the application filed by the Petitioner. Therefore the entire burden was on the Petitioner to establish by producing documentary evidence. It is further pertinent to note here that the averment that the Petitioner was not residing at the address given in the plaint is not even made on oath. No affidavit in support of that averment has also filed.

6. It, thus, appears that the application filed for condonation of delay was without any substance, and only to stall the execution of the decree. Therefore, the Appellate Court was perfectly justified in dismissing the application. The decree has been passed in the year 1992 and the Petitioner has succeeded in stalling the execution of the decree, though it is clear that the Petitioner did not appear

in suit though she was served with suit summons. The Petitioner has also secured an interim order in the petition, which is operating for last two years.

7. The Petition is, therefore, rejected. The Petitioner is directed to pay costs of this petition to the Respondent/ Plaintiff, which are quantified at Rs.5,000/-.

At this stage, a request is made for continuation of the interim order. In view of the findings recorded above, request is rejected.

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